



## *Report to the Auburn City Council*

Action Item
Agenda Item No. 2
City Manager's Approval

**To:** Mayor and City Council Members  
**From:** Reg Murray, Senior Planner  
**Date:** March 9, 2009  
**Subject:** Second Reading - Land Use Appeals Ordinance

### *The Issue*

Should the City Council hold the Second Reading to update the appeals procedures found in several sections of the Auburn Municipal Code (AMC) and add Chapter 162: Land Use Appeals?

### *Conclusions and Recommendation*

By Ordinance, hold a Second Reading, by title only, of the Land Use Appeals Ordinance, which amends several sections of the Auburn Municipal Code and adds Chapter 162: Land Use Appeals.

### *Background*

On February 23, 2009, the Auburn City Council reviewed a request to update the appeals language in Title XV of the Auburn Municipal Code (AMC). The proposal amends several chapters of the AMC, standardizing appeals procedure language, and adds Chapter 162: Land Use Appeals. At the February 23<sup>rd</sup> meeting, the City Council introduced the ordinance for first reading. The City Council's action to adopt Chapter 162 included a motion that removed a provision enabling a call for appeal by City Council (i.e. Section 162.11). The proposed ordinance (Exhibit A) has been modified to reflect the removal of Section 162.11.

### *Alternatives Available to Council; Implications of Alternatives*

A. Deny the Second Reading of the Land Use Appeals Ordinance

### *Additional Information*

Please see the following for more details:

### **EXHIBITS**

A. Ordinance amending Title XV of the AMC and adopting Chapter 162 - Land Use Appeals

ORDINANCE NO. 09-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING  
TITLE XV OF THE AUBURN MUNICIPAL CODE TO ESTABLISH A UNIFORM  
APPEAL PROCEDURE FOR LAND USE MATTERS

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THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

Section One: Section 158.015 of the Auburn Municipal Code is hereby  
amended to read as follows:

§158.015 ADVISORY AGENCY; ADDITIONAL DUTIES AND APPEALS.

The advisory agency shall be responsible for the approval or denial of  
tentative subdivision maps, tentative parcel maps and waived parcel maps  
pursuant to the procedures set forth in this chapter and the Subdivision Map  
Act. Appeals of any decisions of the advisory agency shall be made to the city  
council pursuant to chapter 162.

Section Two: Subsection 158.036 (B) of the Auburn Municipal Code is  
hereby amended to read as follows:

(B) Appeals.

Any interested person adversely affected by the decision of the advisory  
agency or the City Engineer under this section 158.036 may file an appeal to  
the City Council pursuant to chapter 162.

Section Three: Section 158.107 of the Auburn Municipal Code is hereby  
amended to read as follows:

1       §158.107 CONVERSIONS TO CONDOMINIUMS OR COMMUNITY  
2 APARTMENTS; APPEALS FROM ADVISORY AGENCY ACTIONS.

3  
4       Appeals shall be filed and heard in the manner set forth in chapter 162.

5       Section Four: Section 159.001 of the Auburn Municipal Code is hereby  
6 amended to add a new definition as follows:

7  
8       **DIRECTOR** and **COMMUNITY DEVELOPMENT DIRECTOR** shall mean  
9 the community development director of the city or his or her designee.

10       Section Five: Subsection 159.044 (I) of the Auburn Municipal Code is  
11 hereby amended to read as follows:

12  
13       (I) Hardships. In the event a private owner, public or quasi-public  
14 agency, political subdivision or district allegedly incurs a hardship due to the  
15 fact that the OSC classification unreasonably hinders the development or  
16 further development of a parcel, such owner, agency or district may appeal a  
17 decision of the planning commission to the city council pursuant to chapter  
18 162. On appeal, the city council shall determine whether the benefit to the  
19 public welfare, as set forth in this section, is overbalanced by the hardship to  
20 be suffered by the appellant and may apply the requirements of this section  
21 and condition the issuance of any building, use, occupancy or other permit so  
22 that the city council may find that the hardship on the applicant is reduced so  
23 as to be commensurate with the benefit to the public welfare. If the city  
24 council finds that the hardship to the appellant is too great to be justified by  
25 the benefit to the public welfare, the city council shall allow the proposed use  
26 or change upon such conditions as will best protect the public welfare and  
27 accomplish the purposes of in this section to the maximum extent possible.

1        Section Six: Section 159.096 of the Auburn Municipal Code is hereby  
2 amended to read as follows:

3            § 159.096 APPEALS.  
4

5        Appeals from any decision of the planning commission on the matters set  
6 forth in this subchapter shall be made to the city council pursuant to chapter  
7 162.  
8

9        Section Seven: Subsection 159.116 (H) of the Auburn Municipal Code is  
10 hereby amended to read as follows:

11        (H)    Reviewing authority action. The reviewing authority specified by  
12 section 159.115 shall approve, conditionally approve, or deny a permit in  
13 accordance with the requirements of this subchapter.  
14 Such a decision may be appealed pursuant to chapter 162.  
15

16        Section Eight: Section 159.122 of the Auburn Municipal Code is hereby  
17 amended to read as follows:

18            § 159.122 APPEALS.  
19

20        (A)    Appeal of planning commission or historic design review  
21 commission determination. Any person aggrieved by the action of the planning  
22 commission or the historic design review commission may appeal that action to  
23 the city council pursuant to chapter 162.

24        (B)    Appeal of the director's determination. Any person aggrieved by the  
25 action of the director may appeal that action pursuant to chapter 162. Projects  
26 located within the historic design review district shall be appealed to the  
27 historic design review commission. All other actions shall be appealed to the  
28

1 planning commission. Actions appealed from the director to either commission  
2 may be further appealed to the city council pursuant to chapter 162.

3  
4 Section Nine: Section 159.150 of the Auburn Municipal Code is hereby  
5 amended to read as follows:

6 § 159.150 APPEALS.

7  
8 Any person aggrieved by any decision of the director of public works in  
9 the administration of this subchapter may appeal to the planning commission  
10 pursuant to chapter 162. The decision of the planning commission may be  
11 further appealed in the same manner.

12 Section Ten: Section 159.190 of the Auburn Municipal Code is hereby  
13 amended to read as follows:

14  
15 § 159.190 PERMITS; APPLICATIONS; APPEALS.

16 (A) Appeal of planning commission decision. The applicant may appeal  
17 a decision of the planning commission to the city council pursuant to chapter  
18 162.

19  
20 (B) Appeal of the director's determination. The applicant may appeal a  
21 decision of the director pursuant to chapter 162. Projects located within the  
22 historic design review district shall be appealed to the historic design review  
23 commission. All other actions shall be appealed to the planning commission.  
24 Actions appealed from the director to either commission may be further  
25 appealed to the city council pursuant to chapter 162.

26 Section Eleven: Subsection 159.315 (B)(2) of the Auburn Municipal Code  
27 is hereby repealed and Subsection 159.315(B)(1) of that Code is hereby  
28 amended to read as follows:

1 (B) Appeal board.

2  
3 (1) Notwithstanding § 159.314(G), the City Council shall hear  
4 and decide appeals pursuant to chapter 162 and the City Council shall consider  
5 requests for variances from the requirements of this subchapter pursuant to  
6 subsections (B)(2) through (B)(5) of this section.

7 Section Twelve: Section 159.409 of the Auburn Municipal Code is hereby  
8 amended to read as follows:

9  
10 § 159.409 APPEALS.

11 Any person not satisfied with the action of the commission may appeal  
12 the action to the council pursuant to chapter 162.

13  
14 Section Thirteen: Section 159.424 of the Auburn Municipal Code is  
15 hereby amended to read as follows:

16 § 159.424 APPEALS.

17  
18 Any person not satisfied with the action of the commission may appeal  
19 the action to the council pursuant to chapter 162.

20 Section Fourteen: Subsection 159.460 of the Auburn Municipal Code is  
21 hereby amended to read as follows:

22  
23 Except for appeals notice of which is governed by chapter 162, notices of  
24 public hearings required by this chapter shall be given as follows:

25 (A) Service by mail.

26  
27 (1) At least 10 days prior to a public hearing, the commission  
28 shall mail, postage prepaid, a notice of the time and place of the hearing to all  
persons whose names and addresses appear on the latest equalized

1 assessment roll as owners of property within 500 feet of the exterior  
2 boundaries of the land for which an amendment, variance or use permit is  
3 sought.

4  
5 (2) The person filing the petition for action by the Commission  
6 shall supply the names and addresses of those entitled to notice under this  
7 section.

8 (B) Service by publication. In the case of an amendment of this  
9 chapter, notice shall be given by publication of the amendment in a newspaper  
10 of general circulation in the city at least 10 days prior to the hearing.

11  
12 Section Fifteen: Subsection 159.497(F) of the Auburn Municipal Code is  
13 hereby amended to read as follows:

14 (F) Appeals. Appeals may be taken pursuant to chapter 162.

15  
16 Section Sixteen: Subsection 159.506(F) of the Auburn Municipal Code is  
17 hereby amended to read as follows:

18 (F) Appeal. An applicant may appeal denial of a hardship waiver to the  
19 city council pursuant to chapter 162. Such appeal shall waive the 90-day time  
20 limit set forth in this section for purposes of the hearing and issuance of a  
21 decision on the appeal, which shall be controlled by chapter 162.

22  
23 Section Seventeen: Subsection 161.06(J) of the Auburn Municipal Code  
24 is hereby amended to read as follows:

25 (J) Appeals.

26  
27 (1) Appeal of the planning commission's determination. Any  
28 person not satisfied with the action of the commission may appeal the action to  
the council pursuant to chapter 162.

1 (2) Appeal of the director's determination. Any person not  
2 satisfied with the action of the director may appeal the action to the planning  
3 commission pursuant to chapter 162.

4  
5 Section Eighteen: Subsection 161.09(H) of the Auburn Municipal Code is  
6 hereby amended to read as follows:

7 (H) Protected trees within the city are valuable assets to the residents  
8 of the community, and as a result, destruction of or damage to these trees  
9 warrants compensation to the public. Any person who removes, kills, or  
10 significantly damages any tree in violation of this chapter may be required by  
11 the director to provide restitution to the city and to forfeit, either in part or in  
12 whole, the performance guarantee required under section 161.07. In addition  
13 to any other remedies, restitution shall be calculated at triple the rate provided  
14 by section 161.08. A restitution requirement may be appealed to the city  
15 council pursuant to chapter 162.

16  
17 Section Nineteen: Section 153.04 of the Auburn Municipal Code is hereby  
18 amended to read as follows:

19 § 153.04 VARIANCE PROCEDURE.

20  
21 (A) In those cases where strict compliance with these development  
22 standards may be a hardship on an applicant, an alternate plan accomplishing  
23 the objectives of this chapter may be submitted for review by the Community  
24 Development Director.

25 (B) In the event the Community Development Director determines (i)  
26 the proposal entails greater deviation from the requirements of this chapter  
27 than necessary to address the hardship on the applicant, (ii) that he or she  
28 cannot make the findings required by Government Code section 65906 or (iii)



1 that the provisions of this chapter do not plainly address the condition or  
2 situation of the site and the proposal, he or she shall refer the landscape plans  
3 to the Planning Commission to review the plans, with 10 days' mailed notice to  
4 the record owners of property contiguous with the property which is the  
5 subject of the application

6  
7 (C) In the event the applicant disagrees with the decision of the  
8 Planning Commission, he or she may appeal the action to the City Council  
9 pursuant to chapter 162.

10 Section Twenty: Section 155.043 of the Auburn Municipal Code is hereby  
11 amended to read as follows:

12  
13 § 155.043 APPEALS.

14 Appeals on decisions pursuant to this chapter shall be made pursuant to  
15 chapter 162.

16  
17 Section Twenty-One: Title XV of the Auburn Municipal Code is hereby  
18 amended to add Chapter 162 in the form attached hereto as Exhibit A.

19 Section Twenty-Two: This Ordinance shall take effect thirty days  
20 following its adoption as provided by Government Code Section 36937.

21  
22 Section Twenty-Three: Should any provision, section, paragraph,  
23 sentence or word of this Ordinance be rendered or declared invalid by any final  
24 court action in a court of competent jurisdiction or by reason of any  
25 preemptive legislation, the remaining provisions, sections, paragraphs,  
26 sentences or words of this Ordinance shall remain in full force and effect. To  
27 the extent the provisions of the Auburn Municipal Code as amended by this  
28 Ordinance are substantially the same as the provisions of the Code as it read  
prior to the adoption of this Ordinance, then those provisions shall be

1 construed as continuations of those earlier provisions and not as new  
2 enactments.

3  
4 Section Twenty-Four: The City Clerk shall certify to the passage and  
5 adoption of this Ordinance and shall give notice of its adoption as required by  
6 law.

7  
8 DATED: \_\_\_\_\_, 2009

9  
10 \_\_\_\_\_  
J.M. Holmes, Mayor

11 ATTEST:

12 \_\_\_\_\_  
13 Joseph G. R. Labrie, City Clerk

14 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify  
15 that the foregoing ordinance was duly passed at a regular meeting of the City  
16 Council of the City of Auburn held on the \_\_\_\_\_ day of \_\_\_\_\_ 2009 by  
the following vote on roll call:

17 Ayes:

18 Noes:

19 Absent:

20 \_\_\_\_\_  
Joseph G. R. Labrie, City Clerk

21  
22 APPROVED AS TO FORM:

23  
24  
25 \_\_\_\_\_  
26 Michael G. Colantuono, City Attorney

## **EXHIBIT A**

### **CHAPTER 162: LAND USE APPEALS**

#### **SECTION**

- 162.01 TITLE AND PURPOSE**
- 162.02 EFFECT OF FILING**
- 162.03 APPELLATE AUTHORITY**
- 162.04 APPEAL TO PLANNING COMMISSION OR HISTORIC DESIGN REVIEW COMMISSION**
- 162.05 ACTION BY PLANNING COMMISSION OR HISTORIC DESIGN REVIEW COMMISSION**
- 162.06 APPEAL TO CITY COUNCIL**
- 162.07 ACTION BY CITY COUNCIL**
- 162.08 NOTICE OF HEARING**
- 162.09 HEARING TRANSCRIPT**
- 162.10 EFFECT OF DENIAL**
- 162.11 CALLS FOR REVIEW BY CITY COUNCIL**

#### **162.01 TITLE AND PURPOSE**

The purpose of this Chapter is to establish a procedure for appeals of decisions made pursuant to Chapters 153, 155, 158, 159, and 161 and any other provision of this code which references this Chapter.

#### **162.02 EFFECT OF FILING**

The filing of a notice of appeal pursuant to this Chapter stays all activity on a project until a final decision on the appeal.

#### **162.03 APPELLATE AUTHORITY**

Unless otherwise expressly provided in Chapters 153, 155, 158, 159, or 161, any decision made by the Director pursuant to those Chapters may be appealed to the Planning Commission or the Historic Design Review Commission, as the context shall require, and any decision made by the Planning Commission, the Historic Design Review Commission, or the Floodplain Administrator pursuant to those Chapters may be appealed to the City Council. As used in this Chapter, "Director" shall mean the Director of Public Works, the City Engineer, the Floodplain Administrator, or the Community Development Director, as the context shall require.

**162.04 APPEAL TO PLANNING COMMISSION OR THE HISTORIC DESIGN REVIEW COMMISSION**

(A) *Power to hear and decide.* The Historic Design Review Commission shall hear appeals from actions of the Director with respect to design review and historic design review projects located in a historic design review district. The Planning Commission shall hear appeals of all other decisions of the Director under Chapters 153, 155, 158, 159, and 161 unless otherwise specified by this code.

(B) *Filing of appeal.* Unless otherwise specified in this code, any interested person may file an appeal of a Director's decision. The appeal shall be filed in writing with the Community Development Department within ten (10) calendar days after the Director's decision is issued and shall state the grounds for appeal and any specific action the appellant requests the city take. The appropriate fee, established from time to time by resolution of the City Council, shall be paid at the time the appeal is filed. If no appeal is timely filed, the Director's decision is final.

(C) *Hearing and notice.* The Director shall set a hearing on the appeal, which shall be conducted pursuant to Section 162.06. Notice of the hearing shall be given pursuant to Section 162.08.

(D) *Record on appeal.* All materials on file with the Director or Floodplain Administrator shall be part of the record on appeal. In addition, any person may offer supplemental evidence at or before the appeal hearing.

(E) *De novo review.* The Planning Commission or Historic Design Review Commission is not limited to consideration of the materials presented to the Planning Commission, Historic Design Review Commission, Director, or Floodplain Administrator. The Planning Commission or Historic Design Review Commission may consider any matter or evidence relating to the application, request or decision which is the subject of the appeal, regardless of the issues stated in the notice of appeal.

**162.05 ACTION BY PLANNING COMMISSION OR HISTORIC DESIGN REVIEW COMMISSION**

(A) *Options.* Upon hearing an appeal, the Planning Commission or the Historic Design Review Commission may:

(1) Approve an application upon finding that all applicable findings have been properly made and all applicable provisions of this code have been complied with; or

(2) Approve an application but impose additional or different conditions of approvals to fulfill the purposes of the applicable provisions of this code; or

(3) Deny an application, with or without prejudice to the filing of a renewed application for substantially the same land use within one (1) year of the decision on the

appeal, upon a finding that all applicable findings have not been properly made or all applicable provisions of this code have not been complied. A denial without prejudice shall also require a determination that the application has merit and can be modified to conform with all applicable provisions of this code; or

- (4) Remand the matter to the Director with instructions; or
- (5) Continue the matter.

(B) *Vote required.* A majority of the Planning Commission or Historic Design Review Commission members voting shall be required to grant an appeal, or to approve an application as to which the Director or the Floodplain Administrator has failed to act within the time permitted by law. In the event of a tie vote or any other failure of the Planning Commission or Historic Design Review Commission to muster a majority to determine an appeal, the decision appealed from shall be deemed confirmed by that body, subject to further appeal to the City Council if and as authorized by this Code.

(C) *Effective date.* A decision of the Planning Commission or Historic Design Review Commission on an appeal shall be final as to that body, subject to further appeal to the City Council if and as authorized by this Code when rendered unless otherwise provided by the City Council in rules of procedure or otherwise. In cases where the commission adopts a resolution memorializing its decision, final action shall be the adoption of the resolution.

## **162.06 APPEAL TO CITY COUNCIL**

(A) *Power to hear and decide.* The City Council shall hear appeals from actions of the Planning Commission, the Historic Design Review Commission, the Director, and the Floodplain Administrator.

(B) *Appeal of a Planning Commission or Historic Design Review Commission decision.* Any interested person may appeal a final decision of the Planning Commission or the Historic Design Review Commission. The appeal shall be filed in writing with the City Clerk within ten (10) calendar days after the decision and shall state the grounds for appeal and any specific action the appellant requests the city take. The appropriate fee, established from time to time by resolution of the City Council, shall be paid at the time the appeal is filed. If no appeal is timely filed, the Commission's decision is final.

(C) *Appeal of a decision of the Director or Floodplain Administrator.* Any interested person may appeal (i) a decision of the Director made directly appealable to the City Council rather than to the Planning Commission by another provision of this Code or (ii) a decision of the Floodplain Administrator. The appeal shall be filed in writing with the City Clerk within ten (10) calendar days after the decision and shall state the grounds for appeal and any specific action the appellant requests the city take. The appropriate fee, established from time to time by resolution of the City Council, shall be paid at the time the appeal is filed. If no appeal is timely filed, the Director's or Floodplain Administrator's decision is final.

(D) *Hearing and notice.* The City Manager shall set a hearing on the appeal, which shall be conducted pursuant to Section 162.06. Notice of the hearing shall be given pursuant to Section 162.08.

(E) *Record on appeal.* All materials on file with the Director or Floodplain Administrator shall be part of the record on appeal. In addition, any person may offer supplemental evidence at or before the appeal hearing.

(F) *De novo review.* The City Council is not limited to consideration of the materials presented to the Planning Commission, Historic Design Review Commission, Director, or Floodplain Administrator. The City Council may consider any matter or evidence relating to the application, request or decision which is the subject of the appeal, regardless of the issues stated in the notice of appeal.

#### **162.07 ACTION BY CITY COUNCIL**

(A) *Council options.* Upon hearing an appeal, the City Council may:

(1) Approve an application upon finding that all applicable findings have been properly made and all applicable provisions of this code have been complied with; or

(2) Approve an application but impose additional or different conditions of approvals to fulfill the purposes of the applicable provisions of this code; or

(3) Deny an application, with or without prejudice to the filing of a renewed application for substantially the same land use within one year of the decision on the appeal, upon a finding that all applicable findings have not been properly made or all applicable provisions of this code have not been complied. A denial without prejudice shall also require a determination that the application has merit and can be modified to conform with all applicable provisions of this code; or

(4) Remand the matter with instructions.

(5) Continue the matter.

(B) *Vote required.* A majority of the City Council members voting shall be required to grant an appeal or to approve an application as to which the Director, Planning Commission, Historic Design Review Commission, or the floodplain administrator has failed to act within the time permitted by law. In the event of a tie vote or any other failure of the City Council to muster a majority to determine an appeal, the decision appealed from shall be deemed confirmed unless applicable law, such as the California Environmental Quality Act, requires otherwise.

(C) *Effective date.* A decision of the City Council on an appeal shall be final when rendered unless otherwise provided by the City Council in rules of procedure or otherwise. In cases where the City Council adopts a resolution memorializing its decision, final action shall be the adoption of the resolution.

## 162.08 NOTICE OF HEARING

Unless another provision of this code requires otherwise, notice of an appeal hearing shall be provided as follows.

(A) *Time.* Notice of public hearing shall be given at least ten (10) calendar days before the hearing date.

(B) *Content.* A notice of hearing shall include:

- (1) The date, time and place of hearing;
- (2) The identity of the hearing body or officer;
- (3) A general explanation of the matter to be considered, including the action from which appeal is taken; and
- (4) The address or general location of the project site.

(C) *Method of Notice.* Notice shall be given by the following methods:

(1) *Publication.* Notice shall be published in a newspaper of general circulation in the City. If no such newspaper exists when notice is required to be given, such notice shall be posted in at least three public places in the City designated by the City Council.

(2) Notice to owners of property within five hundred (500) feet.

(a) Written notice shall be given by first class mail or personal delivery to all persons shown on the last equalized assessment roll as owning real property within five hundred (500) feet of the external boundaries of the property which is the subject of the appeal.

(b) In the event that more than one thousand (1,000) persons are entitled to notice of an appeal pursuant to subsection (C)(1) above, notice may instead be given by placing a display advertisement of at least one-eighth page in a newspaper of general circulation within the city.

(3) *Appellant, property owner, and applicant.* Notice shall be given to the appellant, owner of the subject property, and the applicant.

(4) *Notice to persons requesting notice.* In all cases, in addition to other notices, notice shall be given by first class mail to any person who has filed a written request with the City to receive notices of public hearings and has paid such fee as the

City Council may establish by resolution for that purpose from time to time. Such a request may be submitted at any time and shall apply for the balance of the calendar year.

(5) *Posting of Property.* Notice shall also be given if and as required by Section 159.460 of this Code.

#### **162.09 HEARING TRANSCRIPT**

Nothing in this Chapter requires the keeping of a verbatim hearing transcript where such a transcript is not otherwise required by law.

#### **162.10 EFFECT OF DENIAL**

When an application for a land use or other approval has been finally denied by the City under Chapters 153, 155, 158, 160 and 161 of this code, no substantially similar application may be filed with the City for that same property for a period of one year from the date of denial unless the decision is expressly stated to be without prejudice to such a further filing.